

**TITLE:** Medical Malpractice Claims Administration

**PURPOSE:** To describe claims management procedures used to administer the medical malpractice claims and suits covered by the COMMONWEALTH OF VIRGINIA RISK MANAGEMENT PLAN (the Plan).

**POLICY:** The Division of Risk Management (DRM) shall establish, maintain and administer risk management plans pursuant to § 2.2-1837 of the *Code of Virginia* (providing parties identified by statute, and to the extent required by statute, protection against liability imposed by law for damages arising from acts or omissions of any nature when parties perform in an authorized governmental or proprietary capacity and within the course and scope of employment or authorization). Acts of medical malpractice allegedly committed by licensed health care providers and pursued through the Virginia Medical Malpractice Act (§ 8.01-581.1 *et seq.*, *Code of Virginia*) may qualify for medical malpractice coverage under the Plan. DRM may settle liability claims pre-litigation on behalf of Plan members within the limits of authority delegated by the Office of the Attorney General (OAG).

**PROCEDURE:** Members, claimants and/or their legal representatives, and the OAG send claim notices, notices of potential claim and suit papers to the DRM claims unit.

Claim technicians collect reported information and check the risk management information system (Civitas) for previously received related reports and/or files. Claim technicians (a) attach reported information to previously received materials and pass to assigned claim handler, or (b) attach to any previously created inactive files and pass to senior claim staff, or (c) note "nothing found" on the face of the reported information and pass to senior claim staff.

Senior claim staff review and give written instructions for distribution on the face of paperwork received, designating claims for medical malpractice line of business only if there are allegations of injury arising from an agency's medical care operations or from medical care delivered by 8.01-581.1 defined provider(s). Senior claim staff record case assignments in unit log, and return paperwork to claim technicians for file set up.

Claim technicians generate Civitas records and create paper files. Claim technicians distribute active notices of claim to assigned staff members for handling and establish incident records for

inactive paperwork. Inactive files are stored on site. For medical malpractice lawsuits, see “Suits”, below.

All persons performing file related activities maintain in each electronic file: progress notes, a diary (“to do” list) of future file activity and a complete account of all financial activities.

### **Claims (pre-litigation)**

#### Coverage assessment

The file handler examines the reported claim and relevant statutes, regulations and procedures; conducts an investigation, as needed; and informs members about the status of coverage

#### Handling covered claims

When a claim is covered the file handler investigates the facts (using outside resources as necessary and as authorized by DRM management), analyzes covered parties’ liability, collects National Practitioner Data Base (NPDB) background information about individual state medical practitioners named in the notice of claim, assesses monetary exposures, establishes reserves and maintains progress notes in Civitas. If the loss exposure of a file is valued at or above \$100,000, a file handler must prepare an initial large loss report within six months following file assignment and must distribute the report to the handler’s supervisor, DRM Director and DRM Assistant Director. The file handler must update and re-distribute the large loss report when significant events occur (e.g. increase or decrease in exposure, additional significant facts are discovered or develop, etc.) as necessary.

If the value of the claim exceeds the monetary authority delegated to DRM by the OAG:

- File handler makes internal report to DRM as provided in the handler’s performance expectations
- File handler ensures that Civitas accurately reflects the monetary exposure and the level of DRM’s involvement
- File handler calculates the expiration date for the statute of limitations and creates diary for file closure (if no further activity generates) on that date OR if needs of file do not warrant continued involvement, file handler may transfer file to claim technician with instructions to diary for closure (if no further activity generates) on that date.
- File handler (or claim technician, if transferred) generates memo to notify OAG, Civil Litigation Section (DRM file number, claimant’s name, affected agency, monetary

exposure, one-line summary of the claim) notifying OAG to contact DRM for additional details if desired

- File handler (or claim technician, if transferred) files information received; forwards correspondence, refers claimants or legal representatives to the OAG; and provides information from the file to the OAG if, when and in the manner requested.
- If transferred, claim technician passes OAG's requests for settlement payments to senior claim staff and transfers file to assigned handler to initiate payment processing. File handler generates draft reports to regulatory boards and agencies as required by the NPDB for affected settlement payments. Draft reports are reviewed and authorized for NPDB submission by DRM management.

If the value of the claim does not exceed the settlement authority delegated to DRM by the OAG, and the file handler determines that there is no liability, he/she may issue denial of the claim.

If the value of the claim does not exceed the settlement authority delegated to DRM by the OAG, and the file handler establishes liability against the Commonwealth, then the file handler:

- Makes internal report to DRM management if required by performance expectations
- Informs the state agency contact and solicits the agency's concurrence with recommendation for claim payment
- Contacts the claimant or his legal representative
- Negotiates settlement-in principle on behalf of the member (within monetary authority levels assigned by DRM management) pursuant to the Virginia Tort Claims Act, the Virginia Medical Malpractice Act and state settlement statutes.
- Reviews and approves claim related payments (within levels of monetary authority assigned by DRM management, obtaining any necessary endorsements)
- Writes payment instructions to claim technicians on the face of payment documents
- Ensures that prompt payment requirements are met
- Generates draft reports to regulatory boards and agencies as required by the NPDB for affected settlement payments. Draft reports are reviewed and authorized for submission by DRM management.

After all claim payments have been made, handler closes file or, as necessary (e.g. subrogation payments, restitution payments, other monetary awards), directs claim technician to begin collections.

For collections, handler makes file transfer note in Civitas, identifying debtors and specific amounts to be collected. See Receivables, below.

Files remain active until the collection process concludes.

### **Suits:**

When DRM receives suit papers filed against state agencies and state employees, the file handler determines the presence or absence of coverage under the risk management plan. File handlers share coverage determinations with affected state agencies and personnel and requests that OAG appoint of counsel for parties entitled to the Plan's medical malpractice coverage. If the loss exposure of a file is valued at or above \$100,000, a file handler must prepare an initial large loss report within six months following file assignment and must distribute the report to the handler's supervisor, DRM Director and DRM Assistant Director. The file handler must update and re-distribute the large loss report when significant events occur (e.g. increase or decrease in exposure, additional significant facts are discovered or develop, etc.) as necessary.

File handler receives and reviews reports regarding facts of the case and/or progress of the litigation from affected parties (defendant agency/employee, assigned defense counsel, monitoring AAG); establishes and maintains accurate loss, legal and expense reserves throughout the life of the file. Except for coverage matters, the file handler refers legal representatives to the OAG to resolve issues arising during the course of the litigation. Handler provides information from the file to the OAG if, when and in the manner requested.

All medical malpractice file payments come from the State Insurance Reserve Trust Fund. Legal bills are reviewed and approved as specified in Civitas Help. -If settlement is reached or adverse judgment entered, the defending AAG or appointed outside defense counsel sends written payment request to DRM. The file handler reviews material provided, ensures that DRM has sufficient information to support payment, and approves payment (within levels of monetary authority assigned by DRM management, obtaining endorsements if necessary). File handler writes payment instructions to claim technicians on the face of payment documents, and makes sure that prompt payment requirements are met.

File handler generates draft reports to regulatory boards and agencies as required. DRM management reviews draft reports and authorizes final submission to the NPDB.

After all claim payments have been made, handler closes file or directs claim technician to begin collections if necessary (e.g. subrogation payments, restitution payments, other monetary awards). When collections will be necessary handler makes file transfer note in Civitas, identifying debtors and specific amounts to be collected. See Receivables, below.

Files remain active until the collection process concludes.

### **Receivables**

Claim technicians review file transfer notes and generate invoices as notes direct to parties responsible for paying DRM. Claim technicians maintain collections files on diary.

When notified by Treasury Operations that payments have been received, technicians record receivable information in Civitas. File is closed when outstanding amounts have been collected.

If payment arrangements are not made or not honored, claim technician notifies Treasury Operations to commence debt set off procedures. Claim technicians provide Treasury Operations with copies of file materials to support debt set off request.

Treasury Operations commences its debt set-off procedures. Claims accepted by debt set off process entitle DRM to collect any money the debtor may be owed by the Commonwealth. When Treasury Operations is notified that money may be available, it issues notice to the debtor that the money will be collected in thirty days. If no arrangements have been made by the debtor to make payment to DRM, Treasury Operations notifies Department of Accounts, and the money transfers to Treasury Operations.

Treasury Operations notifies the claim technician that money has been received via debt set off. The claim technician enters receivable data into Civitas and requests that Treasury Operations credit the related DRM fund. The claim technician closes the DRM file.

### **File closure, storage and retrieval**

Files close when all claim activities are complete. For litigated files, the handler updates Civitas records to show claim outcome. Claim technicians send a letter to the agency contact of the final disposition, mark file as "closed" in Civitas, affix a sticker to the file jacket showing the year of closure, and shelve with other closed files on DRM premises. DRM keeps closed files on site for two years. To transfer closed files to archives, claim technicians enter archive information into Civitas, contact representatives of the Library of Virginia for pickup, and otherwise ensure that files are transported to the state library in keeping with agency records retention policies.